

WATER / TOWN BOARD MEETING OF MAY 13, 2015

PRESENT:	Supervisor	Ed Fairbrother
	Council	Bob Adams
		Lee Giammichele
		Mike Saglibene
	Junior Council	Nicole Cross
	Attorney	Tom Reilly
	Town Clerk	Linda Cross
ABSENT:	Council	Andy Gillette

Supervisor Fairbrother called the Water Board meeting to order at 4:30 p.m. and requested those present to participate in the Pledge of Allegiance.

PUBLIC HEARING: 4:30 p.m. Consolidation of water Districts #1, #2, & #3

Supervisor Fairbrother called the public hearing to order at 4:31 p.m., and read the legal notice duly advertised in the Elmira Star Gazette on, April 18, 2015, April 25, 2015 and, May 2, 2015, to allow public comments on the proposed resolution to consolidate all three presently existing water districts, known as Water District #1, Water District #2, and Water District #3, into one Water District to be known as Water District #5.

IN FAVOR: None

OPPOSITION: None

COMMENTS: None

Since there were no further comments, Supervisor Fairbrother closed the public hearing at 5:10 p.m.

NEW BUSINESS

RESOLUTION NO. 127-15
AGREEMENT CONSOLIDATED WATER DISTRICTS# 1, #2, & #3
TO ONE WATER DISTRICT, KNOWN AS WATER DISTRICT #5 APPROVED

Resolution by: Giammichele
Seconded by: Adams

WHEREAS the Town Board sitting as the Town of Big Flats Water Board has determined that the Water Districts 1-3 would function more efficiently if they were to be consolidated into one Water District to be designated as Water District 5, and

WHEREAS the Town Board sitting as the Town of Big Flats Water Board has drawn a proposed agreement to have the Water Districts 1-3 consolidated into one District, Water District 5, and

WHEREAS the Town of Big Flats held a public hearing on May 13, 2015 regarding proposed consolidation of the Town of Big Flats Water Districts 1-3, and

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WHEREAS the Town of Big Flats Town Clerk complied with all procedural requirements for notice of the public hearing, and

WHEREAS at the public hearing on May 13, 2015 no comments for or against nor in any other fashion were heard as to the proposed extension, and

WHEREAS for environmental review purposes, adoption of regulations, policies, or procedures and local legislative decisions such as the consolidation of special districts are Type II actions in accordance with SEQRA 6 NYCRR, Part 617.5 (c) (20) and as such no further action is necessary regarding the same, now

BE IT THEREFORE be enacted by the Town Board sitting as the Town of Big Flats Water Boards follows: That the proposed consolidation agreement which follows is hereby approved.

TOWN OF BIG FLATS PROPOSED MUNICIPAL WATER DISTRICT PROPOSED JOINT CONSOLIDATION AGREEMENT

PURPOSE The public purpose for the consolidation of existing and contiguous Town Water Districts #1, 2, and 3, is to provide a long-term, safe, reliable and economical water supply to customers within those districts.

METHOD

A new Town Water District is to be comprised of the existing infrastructure, users and boundaries of the current Town Water Districts #1, 2 and 3 which is anticipated to be extended by Board resolution on May 13, 2015.

AUTHORITY

Article 17-A of the General Municipal Law of the State of New York ("GML Art 17-A") and specifically Sections 750 through 793 thereof, effective March 21, 2010, authorizes the consolidation of special districts within a town and amends relevant provisions of the Town Law (§§ 57, 81, 195 and 209-q), the Local Finance Law (§24) and the Municipal Home Rule Law ("MHRL") (§33-a) to facilitate such consolidations. The Town of Big Flats specifically invokes its authority under the New York State Constitution, Municipal Home Rule Law Article 10 and §792 of the General Municipal Law to supersede any relevant but inconsistent provisions of either state or local laws.

1. Pursuant to General Municipal Law §752, the names of each local government entity to be consolidated are: Town of Big Flats Water District #1, Town of Big Flats Water District #2, and Town of Big Flats Water District #3.
2. The name of the proposed consolidated local government entity is Town of Big Flats Municipal Water District #5.
3. The rights, duties and obligations of the proposed consolidated local government entity are the same as those that currently exist in Town Water Districts #1, 2 and 3, as more specifically described in the previously filed Engineer's Map, Plan and Report by Hunt Engineers, Architects

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& Land Surveyors, PC dated February 2015, as amended, hereinafter "MPR" (the contents of which are specifically incorporated into this Joint Consolidation Agreement for the Town of Big Flats Municipal Water Districts) and are those afforded special districts under the New York State Town Law and General Municipal Law Article 17-A.

4. The territorial boundaries of the proposed consolidated local government entity are the same as currently exist on the contiguous exterior of current Water Districts 1, 2, and 3, with the contiguous interior boundaries removed, as described and depicted in the filed MPR. The proposed boundaries of Town of Big Flats Municipal Water District 5 are generally described as being North and South of I86, along Hibbard Road, Sing Sing Road and CR64 to East town line boundary and along SR 352 and are anticipated to be set forth in a resolution extending Districts 1-3 anticipated to be approved by the Town Board on the 13th day of May, 2015.

5. The type and/or class of the proposed consolidated local government entity is a "Special District" as that term is defined in Article 12 & 12A of the NYS Town Law for the supply of water to end users.

6. The governmental organization of the proposed consolidated local government entity is that of a Special District within a Town as provided in the NYS Town Law. Specifically, the Town Board of the Town of Big Flats currently functions as the Commissioners of Town Water Districts # 1, 2, 3, and 4 and will continue to function as Commissioners of the consolidated Town of Big Flats Municipal Water District #5, without a special election therefore, after the consolidation is complete. Water district 4 shall survive as a separate Water District.

7. A detailed fiscal estimate of the cost which may be realized from consolidation is continued in the previously referred to MPR which is on file in the Town Clerk's office and that MPR is incorporated herein. In general, the cost of the consolidation itself of the existing districts is estimated to be any legal costs and engineering expenses as well as the cost of preparing the MPR. The savings incurred by the consolidation will basically consist of the simplification of accounting previously done for three separate Districts. The end users within the existing Water Districts #1, 2, 3, and 4 will see estimated annual savings of \$0. There will be a need to adjust rates as District 1 has had a rate structure different from the other 2 Districts which will be consolidated with it into District 5. While some rates may increase, it is recognized that the cost of water from the Big Flats Water Districts has always been amongst the lowest in most of Water Districts in the State of New York and in other states. It is also recognized that there has been no rate increase since January 3, 2000.

8. Each entity's assets are detailed in the MPR and consist basically of three water wells (one in former District 1 and two in former District 2), water storage, water transmission and distribution infrastructure and equipment but no real property. All other assets such as trucks, computers etc. have been previously purchased jointly between the four Water Districts. The estimated fair value of Districts 1 & 2 assets is \$31,557,340. For District 1, the current asset value is approximately \$9,385,402. For District 2, the current asset value is approximately \$22,171,938. For District 3 the current asset value is approximately \$3,184,260. Water District 4 shall remain a separate entity and it has its own well, piping and tank.

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9. Each entity's liabilities and indebtedness are set forth in the previously filed MPR and consist of no debt in Water Districts #1 and 2, and in Water District 3 there is a total debt of \$514,275 in bond, principal and interest. (There are bonds due to mature in 2020 and a BAN that is being restructured in 2015) in Water District #3.

10. The terms for disposition of existing assets, liabilities and indebtedness of each local government entity is that they will stay in place as will the users of the existing water districts. Existing debt within the individual districts will remain the responsibility of its respective users as it was prior to consolidation. Future improvements to the consolidated Water District 5 will be financed via joint indebtedness for the entirety of Water District 5 and paid for on benefit basis as determined by the Town of Big Flats.

11. The terms for the common administration and uniform enforcement of local laws and the like within the proposed consolidated local government Water District 5, are those rules and regulations promulgated by the Town of Big Flats, and enforced by the Town of Big Flats pursuant to the Big Flats Town Code and State and County Health Department Regulations consistent with GML §769, all local laws, ordinances, rules or regulations currently in effect for the component Water Districts on the effective date of consolidation shall remain in full force and effect until repealed or amended. The Town of Big Flats Town Board will adopt such new local laws, ordinances, rules and regulations as necessary to redress conflicts or ambiguities in existing laws and the like for the common administration and uniform governance of the consolidated Town of Big Flats Municipal Water District 5.

12. The effective date of the proposed consolidation will be immediately upon the adoption of the Proposed Joint Consolidation Agreement by Resolution of the Big Flats Town Board and inconformity with General Municipal Law §756, which is estimated to be voted on at the May 13, 2015 Town Board meeting after the public hearing regarding this issue is held.

13. The time and place for the Public Hearing on this Proposed Joint Consolidated Agreement pursuant to General Municipal Law §754 will be as noticed by resolution of the Big Flats Town Board and is set for May 13, 2015 at 4:30p.m. at the Big Flats Town Hall located at 476 Maple Street, Big Flats, New York 14845.

Proposed by the members of the Town of Big Flats Town Board, acting as the Commissioners of Town Water Districts # 1, 2, 3, and 4, on April 8, 2015.

Approved by:
Edward Fairbrother
Supervisor of the Town of Big Flats

CARRIED: AYES: Giammichele, Adams, Saglibene, Fairbrother NAYES: None
ABENT: Gillette

Since there was no further business to come before the Water Board, Supervisor Fairbrother closed the Water Board at 5:14 p.m.

Supervisor Fairbrother opened the Town Board Meeting at 5:15 p.m.

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TOWN BOARD

PUBLIC HEARING: 4:32 p.m. Timber Harvest, Wagner Hardwood, LLC

Supervisor Fairbrother called the public hearing to order at 5:16 p.m., and read the legal notice duly advertised in the Elmira Star Gazette on May 8, 2015, to allow public comments regarding. Wagner Hardwood, LLC Timber Harvest permit, on tax parcel #87.00-1-19 located on 2346 NYS Route 352.

IN FAVOR: None

OPPOSITION: None

COMMENTS: None

Since there were no further comments, Supervisor Fairbrother closed the public hearing at 5:17 p.m.

CONCERNS OF THE PEOPLE - None

REPORTS

Supervisor Fairbrother stated the following reports for April 2015 have been received and are on file in the office of the Town Clerk:

Town Clerk's Monthly Report, Supervisor's Fund Balance Report, Youth Department Monthly Report, Department of Public Works Monthly Report, Assessor's Monthly Report, Code and Planning Department Monthly Report, Community Center Monthly Report, Court's Monthly Report for March & April, Dog Control's Monthly Report for March & April.

NEW BUSINESS

RESOLUTION NO. 128-15
JOEL PEARSON APPOINTED AS DOG CONTROL OFFICER FOR
THE TOWN OF BIG FLATS APPROVED

Resolution by: Adams
Seconded by: Saglibene

WHEREAS, Section 113 of the New York Agriculture and Markets Law requires each town to appoint one or more dog control officers for the purposes of assisting within the town with the control of dogs for the purpose of enforcing Article 7 of the Agriculture and Markets Law; and

WHEREAS, Section 108 subdivision 6 of the Agriculture and Markets Law defines a dog control officer as "any individual appointed by a municipality to assist in the enforcement of Article 7 of the Agriculture and Markets Law of the State of NY or any authorized officer, agent

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RESOLUTION NO. 128-15, JOEL PEARSON APPOINTED AS DOG CONTROL OFFICER FOR THE TOWN OF BIG FLATS APPROVED continued

or employee of an incorporated dog protective association under contract with a municipality to assist in the enforcement of Article 7; and

WHEREAS for over one year Joel Pearson and his facility now known as Southern Tier Dog Control, Inc. have essentially been performing the services of a dog control officer for the Town of Big Flats; and

WHEREAS his facility has been inspected as a Dog Control Officer by Kathleen Wright, Animal Health Inspector for the NY Department of Agriculture and Markets and reviewed by David Phillips of the same office (see Dog Control Officer Inspection Report – DL-89) and has been found to be “satisfactory” in all respects; and

WHEREAS for environmental review purposes, interpreting an existing code, and adoption of regulations, policies, or procedures and local legislative decisions are Type II action in accordance with SEQRA 6 NYCRR, Part 617.5 (c) (31, 27) and as such no further action is necessary regarding the same; now

BE IT HEREBY RESOLVED that, effective this date, Joel Pearson is appointed the Dog Control Office for the Town of Big Flats and that his compensation shall be solely as provided via the presently existing contract with “Southern Tier Dog Control” located at 245 Sawdey Road, Horseheads, NY which was signed on 12/31/14 and expires on 12/31/17.

CARRIED: AYES: Giammichele, Adams, Saglibene, Fairbrother NAYES: None
ABENT: Gillette

RESOLUTION NO. 129-15
U.S. COMMUNITIES COOPERATIVE PURCHASING ALLIANCE APPROVED

Resolution by: Saglibene
Seconded by: Giammichele

WHEREAS the Town of Big Flats pursuant to the authority granted in State of New York Statutes General Municipal Law Article 5A (Public Contracts) Section 103, desires to participate in the U.S. Communities Cooperative Purchasing Alliance. Said Alliance is sponsored by the Association of School Business Officials International; the National Association of Counties; the National Institute of Governmental Purchasing; the National League of Cities; the United States Conference of Mayors and New York State, and

WHEREAS the Town of Big Flats desires to participate for the purpose of fulfilling and executing its respective public governmental purposes, goals, objectives, programs and functions, and

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RESOLUTION NO. 129-15, U.S. COMMUNITIES COOPERATIVE PURCHASING ALLIANCE APPROVED continued

WHEREAS the Town of Big Flats has reviewed the benefits of participating in this program and based on this review has concluded the program will provide the best value to taxpayers of this Town of Big Flats through the anticipated savings to be realized, now

THEREFORE BE IT RESOLVED the Town Board of Big Flats authorizes the Town Supervisor to participate in the U.S. Communities Cooperative Purchasing Alliance and that the Town Supervisor is authorized to register for the U.S. Communities program on behalf of all departments in the Town of Big Flats.

CARRIED: AYES: Giammichele, Adams, Saglibene, Fairbrother NAYES: None
ABENT: Gillette

RESOLUTION NO. 130-15
TOWN OF BIG FLATS PROCUREMENT POLICY FOR PURCHASES AND CONTRACTS
FOR SERVICES APPROVED

Resolution by: Giammichele
Seconded by: Adams

WHEREAS section 104b of the General Municipal Law (GML) requires every government to adopt internal policies and procedures governing all procurement of goods and services not subject to the bidding requirements of GML Section 103 or any other law, and

WHEREAS this policy was initially approved at a Board meeting on December 10, 2014, Resolution No. 276-14, and

WHEREAS amendments were needed in the numbers of the paragraphs etc, and

WHEREAS it has been suggested that language be adopted dealing with non-responsive/irresponsible bidders and contractors, and

WHEREAS comments have been solicited from those offices of the Town of Big Flats involved with procurement, and

WHEREAS for environmental review purposes, interpreting an existing code, and adoption of regulations, policies, or procedures and local legislative decisions are Type II action in accordance with SEQRA 6 NYCRR, Part 617.5 (c) (31,27) and as such no further action is necessary regarding the same, now

BE IT THEREFORE RESOLVED that the Town of Big Flats does hereby adopt the following procurement policies and procedures:

**TOWN OF BIG FLATS
PROCUREMENT POLICY**

**PART A. GENERAL RULE REGARDING PURCHASES NOT REQUIRING PRIOR
AUTHORIZATION OF THE BOARD**

PART I. PURPOSE

PART II. DEFINITIONS

PART III. GENERAL PROVISIONS

PART IV. PROCUREMENT FOR PURCHASE CONTRACTS

PART V. PROCUREMENT FOR PUBLIC WORKS

PART VI. PROCUREMENT OF PROFESSIONAL SERVICES

PART VII. SOLE SOURCE PROCUREMENT

PART VIII. EMERGENCY PROCUREMENT

PART IX. EQUIPMENT LEASES

Part X. PROCUREMENT LOBBYING

PART XI. MWDBE REQUIREMENTS

PART XII. PROPOSAL AND BID OPENINGS

PART XIII. RESPONSIBILITY DETERMINATIONS

PART XIV. PIGGYBACKING

PART XV. BEST VALUE

PART XVI. RECORDKEEPING

PART XVII. INDIVIDUALS RESPONSIBLE FOR PURCHASING

PART XVIII. STATUTORY AUTHORIZATIONS

PART XIX EFFECTIVE DATE

**PART A. GENERAL RULE REGARDING PURCHASES NOT REQUIRING PRIOR
AUTHORIZATION OF THE BOARD IS THAT, OTHER THAN THE FOLLOWING
PURCHASES, ALL PURCHASES OVER \$5,000 REQUIRE PRIOR BOARD APPROVAL**

**1. IN ALL MATTERS THE TOWN SUPERVISOR IS AUTHORIZED TO APPROVE
PURCHASES OR SERVICES DURING EMERGENCIES WITHOUT PRIOR BOARD
APPROVAL THAT EXCEED THE SUM OF \$5,000.**

**2. The Town Supervisor/Highway working Foreman/DPW Commissioner are authorized to
perform the following:**

- Make purchases up to \$5,000.00 for parts, services, and other equipment for use in the Department of Public Works, as necessary, provided they are covered in the budget, and
- To advertise for bids on tires, salt, cinders, sand, parts and tools, as needed, and
- To accept State and County bids for any and all items under State and County bid system, provided they are covered in the Highway budget; with the exception that any bid for vehicles and equipment shall be subject to prior Town Board approval, and
- Hiring of people from temporary agencies be pre-approved by the Town Board, or Town Supervisor, where applicable. (Per Board Resolution 30-14)

The Town Supervisor is authorized to pay the Five Star Bank Visa, Sam's Club accounts, any other authorized credit cards, debt service payments and utility bill as they become due without prior approval of the Town Board (Per Board Resolution 20-14).

OTHER THAN AS SET FORTH ABOVE, THE TOWN BOARD MUST APPROVE, PRIOR TO OBTAINING SERVICES, PARTS AND OTHER EQUIPMENT INCLUDING ENGINEERING, **ALL PURCHASES OVER \$5,000.**

PART I. PURPOSE

Pursuant to General Municipal Law §104-b, "so as to assure the prudent and economical use of public moneys in the best interests of the taxpayers, to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances, and to guard against favoritism, improvidence, extravagance, fraud and corruption" the following Procurement Policy is applicable to the procurement of goods and services **not** subject to competitive bidding and certain rules that are applicable to procurement subject to competitive bidding as set forth under General Municipal Law §103.

PART II. DEFINITIONS

A. Best Value.

Means the basis for awarding contracts for services to the Town that optimizes quality, cost and efficiency, among responsive and responsible bidders. Non-price factors can be considered in awarding a purchase contract. The basis for a best value award shall reflect, wherever possible, objective and quantifiable analysis. Such basis may also identify a quantitative factor for bidders that are small businesses or certified minority- or women-owned business enterprises, as defined in Executive Law §300 (1), (7), (15) and (20), to be used in evaluation of offers for awarding of contracts for services. *See State Finance Law §163(1)(j).* In awarding a contract or purchase on the basis of best value, the Town must be prepared to show that (1) the bidder is responsive and responsible and (2) that the Town applied objective and quantifiable standards, when possible, to determine that the offer optimizes quality, cost and efficiency. If the award is based on criteria that are not objective and quantifiable then there should be written justification for the award kept in the records.

B. Commodities.

As used in this Policy, unless stated otherwise, means material goods, supplies, products, construction items or other standard articles of commerce, other than technology, which are the subject of any purchase or other exchange. *See State Finance Law §160(3).*

C. Contract Administrator.

Refers to the staff member who assists with or handles procurement matters also referred to herein as the procurer.

D. Professional Services.

Are a subset of the general category Services, further defined in Part VI of this Policy.

E. Public Work.

Refers to §103 of the General Municipal Law and encompasses contracts for services, labor or construction.

F. Public Improvement.

Means projects involving the erection, construction, reconstruction or alteration of Town facilities, including but not limited to buildings, grounds and roads.

G. Purchase Contract.

As used in General Municipal Law, this means a contract for goods, commodities and equipment, including technology.

H. Service or Services.

Means the performance of a task or tasks and may include a material good or a quantity of material goods, and which is the subject of any purchase or other exchange. *See State Finance Law §160(7).*

I. Technology.

Means either a good or a service or a combination thereof, resulting in a technical method of achieving a practical purpose or in improvements in productivity. Goods may be either new or used. *See State Finance Law §160(10).*

PART III. GENERAL PROVISIONS

A. Applicability of Policy

1. Applicability and Funding Source Requirements. **Unless the funding source (i.e. a state or federal grant) for a purchase requires otherwise**, procurements not subject to competitive bidding under General Municipal Law §103 must be made in accordance with this Policy. **If funding source guidelines conflict with or are more stringent than this policy**, Contract Administrators should confer with the Town Attorney prior to soliciting or acquiring the commodity, equipment or service.

2. Applicability by Procurement Methods

Parts IV and V of this policy are not applicable if a procurement is made:

- ✍ through Preferred Sources pursuant to State Finance Law §162 (However, an explanation of Preferred Source requirements as applied to Purchase Contracts and Public Works can be found in Parts IV and V, respectively.);
- ✍ through the New York State Office of General Services pursuant to General Municipal Law §104;
- ✍ through another New York county's contract pursuant to General Municipal Law §103(3);
- ✍ in an emergency pursuant to General Municipal Law §103(4) and Part VIII of this Policy;
- ✍ as a Professional Service pursuant to Part VI of this Policy;
- ✍ as a Sole Source pursuant to Part VII of this Policy;
- ✍ through federal, New York State, or New York political subdivisions, districts or public benefit corporations when the purchase is surplus or second-hand supplies, material or equipment pursuant to General Municipal Law 103(6) or the purchase of from another New York municipality services provided by that municipality in an effort to share services between municipalities ;
- ✍ through certain federal General Services Administration schedules pursuant to General Municipal Law §103(1-b) or §104(2);
- ✍ through "piggybacking" on other federal, state or local government contracts for certain

goods and services pursuant to General Municipal Law §103(16) and Part XIV of this policy; or
✍ through other exemptions as may be authorized by the laws of the State of New York.

B. Determining Whether a Procurement is Subject to Competitive Bidding

Before any solicitation occurs, procurers need to first determine whether the intended procurement is subject to competitive bidding under General Municipal Law §103. Competitive bidding is required if the reasonably expected countywide **aggregate** will exceed the threshold amounts of \$20,000 for "purchase contracts" (commodities and technology when services are not the predominant portion of the procurement) or \$35,000 for "public works" (services, exclusive of professional services) within 12 months of the date of the planned purchase.

Submission of items put out for bid or RFPs will be done by the Town **electronically** via its web site as much as possible as well as by print methods as required. "Sealed bids" or "sealed offers" may also be submitted in an electronic format and they must also contain the statement of non-collusion required by Section 103(d) of the General Municipal Law. Submission in electronic format may, for technology contracts only, may be required as the sole method for the submission of bids and offers. Bids and offers submitted in an electronic format shall be transmitted by bidders and offerers to the receiving device designated by the political subdivision or district. Any method used to receive electronic bids and offers shall comply with article three of the state technology law, and any rules and regulations promulgated and guidelines developed thereunder and, at a minimum, must (a) document the time and date of receipt of each bid and offer received electronically; (b) authenticate the identity of the sender; (c) ensure the security of the information transmitted; and (d) ensure the confidentiality of the bid or offer until the time and date established for the opening of bids or offers. The timely submission of an electronic bid or offer in compliance with instructions provided for such submission in the advertisement for bids or offers and/or the specifications shall be the responsibility solely of each bidder or offerer or prospective bidder or offerer. No political subdivision or district therein shall incur any liability from delays of or interruptions in the receiving device designated for the submission and receipt of electronic bids and offers.

Under General Municipal Law §103(1), aggregates must be examined in two ways:

1. By Commodity or Service – Procurers must determine the reasonably expected aggregate amount of all purchases of the same commodities, services or technology that will be made within 12 months of the date of the planned purchase. This means that if your department is purchasing janitorial services for \$1,000 on October 13, you need to evaluate whether it is reasonably expected that the entire Town will purchase over \$35,000 in janitorial services within 12 months of October 13. If it is reasonable to expect this, the \$1,000 in janitorial services for your department must be competitively bid pursuant to General Municipal Law §103. Artificial division of purchases of commodities, technology or services to avoid the thresholds is prohibited by General Municipal Law §103(1); and

2. By Vendor – Procurers must also determine whether the reasonably expected aggregate amount of all purchases of the same commodities, services or technology within 12 months of the date of the planned purchase will be made from the same vendor. Therefore, if your department is purchasing \$500 in software from XYZ Corp. on February 7, you need to evaluate whether it is reasonably expected that the entire Town will purchase over \$20,000 in similar

goods from that same vendor within 12 months of February 7. If it is reasonable to expect this, the \$500 in software must be competitively bid pursuant to General Municipal Law §103. GML §103 (1) does not permit change orders to or renewals of contracts that were not competitively bid initially because they did not meet the \$20,000 threshold if the change order or renewal would bring the reasonably expected 12-month aggregate amount of purchases from the same vendor over the \$20,000 threshold. Therefore, if you need additional software in November from the same vendor, i.e., XYZ Corp., you must first determine whether the vendor already has over \$20,000 in contracts with the County before you prepare and submit a change order or renewal of the initial contract on February 7. If the aggregate amount exceeds \$20,000, a change order to or renewal of the initial contract would not be legal and the additional software purchase must be bid.

While it is not easy to examine or guarantee the accuracy of aggregates, the following methods may be useful:

- ✍ reviewing past use of that commodity, technology, service or vendor, both from general knowledge and by querying; other sources;
- ✍ conferring with the other departments that are known to use similar commodities, technology, services or vendors to determine their reasonably expected procurements for the 12 months after your purchase; or
- ✍ noting grant awards or significant projects (e.g. when they are announced in other meetings) that may involve major purchases that could be similar to yours.

PART IV. PROCUREMENT FOR PURCHASE CONTRACTS

A. General Provisions for Purchase Contracts

Except in emergency situations, if items required for a Purchase Contract are available from a Preferred Source in the form, function and utility required by the procurer, the items must be purchased through a Preferred Source Provider and is not subject to competitive bidding. Preferred sources have been set by the State of New York by statute. *See immediately following Section B of this Part IV for more information on Preferred Source procurement for Purchase Contracts.*

B. Preferred Source Exception for Purchase Contracts

Except in emergency situations, when commodities or goods are available from a Preferred Source in the form, function and utility required by the procurer, they must be purchased from one of the Preferred Source providers identified on the list below in descending order **prior to** any solicitation from any other vendor. *See NYS Finance Law §162 for updates to this list and any changes to order of priority.*

1. The New York State Department of Corrections, Correctional Industries Program (CORCRAFT)
 2. Approved charitable non-profit-making agencies for the blind
 3. Qualified non-profit-making agencies for other severely disabled persons, a qualified special employment program for mentally ill persons or a qualified veterans' workshop
- Consult the Preferred Source Guidelines on the Office of General Services website, currently available at <http://www.ogs.state.ny.us/procurecounc/pdfdoc/psguide.pdf> for details on the process for Preferred Source acquisitions, including the 10-day notice requirement to Preferred Sources if your procurer determines that the commodity offered on the List of Preferred Source Offerings does not meet the form, function and utility you require (e.g. a Preferred Source offers

staplers but not the kind of staplers that meet your form, function and utility requirements). *State laws and regulations governing Preferred Source procurement shall control over any conflicting provisions in this Policy.*

C. Other Expedited Procurement Methods for Purchase Contracts

If a procurement is not an emergency or if the items cannot be purchased through a Preferred Source, you may consider other expedited procurement methods, including purchasing through the following entities:

1. New York State contracts per General Municipal Law §104. Certain State contracts for procurement of commodities, equipment, materials, supplies, services, technology and food products are made available to local governments through the New York State Office of General Services (GSA) and are accessible at www.ogs.ny.gov and orders should be made directly with the contractors listed, using the Town's purchase order and having on the purchase order and the original invoice presented for payment the State contract number. For price sensitive commodities subject to volatile market conditions OGS has an online "fixed requirements" database to assist procurers. Please pay attention to the rules regarding these commodities and the purchases thereof.
2. Other counties' contracts per General Municipal Law §103(3). Any officer, board or agency of a political subdivision or of any district therein authorized to make purchases of materials, equipment or supplies, or to contract for services, may make such purchases, or may contract for services, other than services subject to article eight or nine of the labor law, when available, through the county in which the political subdivision or district is located or through any county within the state subject to the rules established pursuant to subdivision two of section four hundred eight-a of the county law; provided that the political subdivision or district for which such officer, board or agency acts shall accept sole responsibility for any payment due the vendor or contractor. All purchases and all contracts for such services shall be subject to audit and inspection by the political subdivision or district for which made. Prior to making such purchases or contracts the officer, board or agency shall consider whether such contracts will result in cost savings after all factors, including charges for service, material, and delivery, have been considered. No officer, board or agency of a political subdivision or of any district therein shall make any purchase or contract for any such services through the county in which the political subdivision or district is located or through any county within the state when bids and offers have been received for such purchase or such services by such officer, board or agency, unless such purchase may be made or the contract for such services may be entered into upon the same terms, conditions and specifications at a lower price through the county.
3. A group purchasing organization, if your unit of government is eligible, per General Municipal Law §103(8)
4. Surplus or second-hand supplies, materials or equipment from the federal government, the state of New York, or from any other New York political subdivision, district or public benefit corporation per General Municipal Law §103(6)
5. Certain Federal GSA Schedules, if the procurement involves the applicable type of goods per General Municipal Law §103(1-b) or §104(2) and/or GSA "Schedule 70."
6. "Piggybacking" on other federal, state or local government contracts which have been extended to apply to local governments for purchase of "apparatus, materials, equipment and

supplies" per General Municipal Law §103(16) or

7. Other applicable entities pursuant to any New York State law enacted as an exemption to the requirements of General Municipal Law §103.

Any orders placed directly with contractors included in the above expedited methods should have on the order and the original invoice presented for payment the nature of the expedited procurement method used.

If you aren't using any of the expedited methods then the general policy described in this Part applies to the Purchase Contract.

D. The following guidelines apply to all purchase contracts where the purchase of the goods, commodities or technology is not an emergency and procurement cannot be made through a Preferred Source or other expedited procurement method.

For Purchase Contracts

They may be purchased:

estimated to cost as follows for purchases under \$10,000:

Under \$100	At the discretion of the procurer.
\$100-499	By soliciting 2 verbal quotes.
\$500-\$999	By soliciting 3 verbal quotes.
\$1,000-\$4,999	By soliciting 2 written quotes.
\$5,000-\$19,999	By soliciting 3 written quotes.

For Purchase Contracts estimated to cost over \$20,000:

\$20,000 and up by sealed competitive bids or Best Value procurement in conformance with General Municipal Law §103 and Part XIX of this Policy, as applicable at the time of purchase.

Awards for purchase contracts estimated to cost less than \$20,000 may be made to the responsive and responsible potential vendor submitting the lowest price and if considered the best value. In any case, if the award is given to someone other than the lowest bidder, and the basis of award was **not** Best Value in accordance with Part XV of this Policy, then General Municipal Law §104-b requires that the Department justify and document in writing the basis for awarding the contract to an individual or entity other than the lowest bidder. The written justification must state how such an award: furthers the public good; assures the prudent use of taxpayers' money; ensures that the purchased goods are of the best quality at the lowest possible cost in light of the circumstances existing; and guards against favoritism, extravagance, fraud and/or corruption. Unless delegated otherwise in writing by the Town Supervisor, all goods, equipment and commodities shall be procured through the Town of Big Flats Procurement Policy. Compliance with this Policy and any related procedures for such purchases will be the responsibility of the procurer or his/her designee.

PART V. PROCUREMENT FOR PUBLIC WORKS

A. General Provisions for Public Works Contracts

Except in emergency situations or when procuring professional services, if services required for a Public Works contract are available in the form, function and utility required by the Procurer from a Preferred Source, the services must be purchased through a Preferred Source Provider. *See Section B of this Part V for more information on Preferred Source procurement of services.*

The following guidelines apply to the procurement of all Public Works, absent an emergency, purchase through a preferred source or other expedited procurement method.

For Public Works They may be purchased:

estimated to cost under \$20,000:

Under \$1,000	At the discretion of the procurer.
\$1,000- \$4,999	By soliciting 2 verbal quotes.
\$5,000-\$9,999	By soliciting 2 written quotes.
\$10,000-\$34,999	By soliciting 3 written quotes.

For Emergencies There is no restriction except as set out below.

For insurance and professional services RFPs may be solicited at the discretion of the procurer.

For Public Works estimated to cost over \$35,000: \$35,000 and up by sealed competitive bids or Best Value procurement in conformance with General Municipal Law §103 and Part XIX of this Policy, as applicable at the time of purchase.

Awards for public works contracts estimated to cost less than \$35,000 may be made to the responsive and responsible potential vendor submitting the lowest price and/or best value. If the award is given to someone other than the lowest bidder and the basis of award was not Best Value in accordance with Part XV of this Policy, then General Municipal Law §104-b requires that the Department justify and document in writing the basis for awarding the contract to an individual or entity other than the lowest bidder. The written justification must state how such an award furthers the public good; assures the prudent use of taxpayers' money; ensures that the purchased services are of the best quality at the lowest possible cost in light of the circumstances existing; and guards against favoritism, extravagance, fraud and/or corruption. The procurement of services for each unit of Town government shall be the responsibility of that unit of government. The Town Supervisor reserves the right to solicit and procure services of any type for all or several units of government in the aggregate and all such units of government shall be required to use the aggregate contract once the current term of any unit's contract for the same service expires. Each Department Head or his or her written designee or the designated procurer shall be responsible for and maintain appropriate documentation to demonstrate his or her unit's compliance with this Policy and any related procedures. Procurers responsible for procurement activities must be designated in writing by the Department Head, which shall be maintained on file with the Town Clerk and shall be updated as changes occur.

B. Preferred Source Exception for Public Works Contracts

Pursuant to State Finance Law §162 and except in emergency situations, when Services are available in the form, function and utility required by a Procuring Agency, those services MUST be purchased from the following Preferred Source Providers, according equal priority to:

1. Approved, charitable, non-profit-making agencies for the blind;
2. Approved, charitable, non-profit-making agencies for other severely disabled persons;
3. Qualified special employment programs for mentally ill persons; and
4. Qualified veterans' workshops.

See NYS Finance Law §162 for updates and any changes to the order of this list.

If multiple sources meet the specifications, cost shall be the determining factor in selection.

Consult the Preferred Source Guidelines on the NYS Office of General Services website, currently available at <http://www.ogs.state.ny.us/procurecounc/pdfdoc/psguide.pdf>, for details on

the process for Preferred Source acquisitions, including the 10-day notice requirement to Preferred Sources of your Department's need for services that appear on the List of Preferred Source Offerings (i.e. if you need janitorial services and janitorial services is on the List of Preferred Source Offering, those Preferred Sources must be notified of your form, function and utility requirements.)

State laws and regulations governing Preferred Source procurement shall control over any conflicting provisions in this Policy.

C. Other Expedited Procurement Methods for Public Works

If a procurement is not a Professional Service, an emergency or if the services cannot be purchased through a Preferred Source, you may consider other expedited procurement methods, including purchasing through the following entities:

1. New York State contracts per General Municipal Law §104
2. Other counties' contracts, except those involving services subject to Article 9 of the New York State Labor Law, per General Municipal Law §103(3)
3. A group purchasing organization, if your unit of government is eligible, per General Municipal Law §103(8)
4. Federal GSA Schedules if the procurement involves the applicable type of services per General Municipal Law §103(1-b) or §104(2)
5. "Piggybacking" on other federal, state or local government contracts for "services related to the installation, maintenance or repair of apparatus, materials, equipment and supplies" per General Municipal Law §103(16) or
6. Other applicable entities pursuant to any New York State law enacted as an exemption to the requirements of General Municipal Law §103.

If you aren't using any of the expedited methods then the general policy described in this Part applies to all purchase contracts.

PART VI. PROCUREMENT OF PROFESSIONAL SERVICES

A. Determination of Professional Services

"Professional Services" are defined in New York case law and Comptroller opinions. As a general guideline, "Professional Services" require specialized or technical skills or expertise, training, licensing or certifications, exercise of professional judgment or discretion or a high degree of creativity and/or a relationship of personal trust and confidence. Some examples of Professional Services include but are not limited to, services provided by: physicians, nurses, therapists, engineers, surveyors, attorneys, designers, publicity agents, laboratories, and insurance or financial service firms. Consult the Town Attorney prior to any solicitation with any questions regarding the Professional Services exemption.

Procurements that involve both the acquisition of Professional Services and Goods (e.g. equipment or computer software that needs to be customized for the Town) may not be subject to competitive bidding if there is an "inextricable integration of scientific and technical skills" required with the purchase of the Goods. *Burroughs Corp. v. New York State Higher Education Services Corp.*, 458 N.Y.S.2d 702 (3 Dept. 1983). This integration analysis also applies to procurements that involve the acquisition of Professional with other Services (e.g. design work with printing). To determine whether the procurement is subject to competitive bidding, you should look to whether the other Services are predominant or merely incidental. If you have

questions or are uncertain whether the procurement is exempt from competitive bidding, consult the Town Attorney prior to soliciting any such procurements.

B. Solicitation of Professional Services

Unless exempted under Part VI.C:

If the estimated cost of a particular Professional Service contract is \$75,000 or more, the Procuring Agency may issue a Request for Proposals (RFP) that, at a minimum, requires submission of pricing and qualifications by potential service providers so long not prohibited by any State or Federal law or regulation.

When quotes or proposals are required for Professional Services and a contract is not awarded to the lowest priced quote or proposal submitted, General Municipal Law §104-b(e) requires that the procurer justify and document in writing the reasons for awarding the contract. The written justification must generally address how such an award furthers the public good; assures the prudent use of taxpayers' money; ensures that the purchased goods are of the best quality at the lowest possible cost in light of the circumstances existing; and guards against favoritism, extravagance, fraud and/or corruption.

C. Exemptions from Solicitation for Professional Services²

Certain types of professional services may be exempt from any RFP process upon approval of the Town Supervisor. Such an exemption might apply to contracts for services with set rates for classes of vendors or for contracts where the Town was mandated to use certain vendors by State or Federal laws, regulations or grant requirements. Examples of such contracts include, but are not limited to:

- a.) Contracts with third-party agencies hired by the State to pass-through funds for or implement certain State programs;
- b.) Contracts at rates set by federal, state or local agencies, statute and/or regulation;
- c.) Sub-grants, inter-municipal and similar agreements for professional services provided in relation to a State or Federal grant for which the Town is the responsible Grantee and the contracted party was identified in the grant application.
- d.) Funding agreements with not-for-profit corporations and other service organizations that provide a unique service that advances the public good. Where more than one such organization provides the same services, as Determined by the Town Supervisor or his designee, then such funding agreement may be subject to a Request for Applications (RFA).
- e.) Contracts with former employees for transitional consulting services
- f.) Contracts to fund entities that operate emergency and transitional housing
- g.) Contracts to implement a program that is jointly funded by the Town and an outside agency or entity; i.e., a program in which both the Town and/or the outside agency or entity contributes funding or in-kind services.
- h.) Contracts for existing projects that require the continuity of professional services to ensure proper completion of the project

All requests for exemptions, except those on the basis of a – c above, require that the procurer provide written justification for the request to the Town Supervisor. The written justification must generally address how such an award furthers the public good; assures the prudent use of taxpayers' money; ensures that the purchased goods are of the best quality at the lowest possible cost in light of the circumstances existing; and guards against favoritism, extravagance, fraud and/or corruption.

D. Advertising for Professional Services Solicitations

It is recommended **but not required** that RFPs be advertised in the official paper(s) and/or be made available on the Department's website and/or any website consistently used by the Town for solicitation, for at least five (5) days, commencing with the date after the day of publication and not including the proposal opening date (let date).

E. Award of Professional Services RFP's

It is important to keep in mind that the award of a RFP must be made in accordance with the evaluation criteria specified in the RFP.

PART VII. SOLE OR SINGLE SOURCE PROCUREMENT

Sole or single source procurement is an exception to the general rules and policies stated herein, governing the procurement of goods and/or services. Sole or single source procurement may only be used in rare and extraordinary cases where the goods or services sought and required are manufactured, sold or performed by only one entity and/or individual. Generally, this will only apply in the following situations:

- ✍ Only one company in the world makes and sells a certain good or provides a certain service.
- ✍ Only one company in the world can service or maintain the equipment without voiding the warranty. (Note: This only applies during the warranty period so you cannot continue to use the sole source exemption after warranty expiration. After warranty expiration, repairs and maintenance must be bid.)
- ✍ Leasing equipment like postal machines or copiers that have a certain type of consumable component (e.g. ink cartridges) that must be used to avoid breaching a warranty or a maintenance provision of a lease.
- ✍ It is a service performed by companies that traditionally have territories (e.g., cable TV or certain types of equipment dealerships).
- ✍ Software licensing and/or maintenance contracts specific to the software.

In determining whether a purchase qualifies for a Sole or Single Source exemption, the procurer must document, at a minimum:

- a. The unique benefits to the Town of the product or service as compared to other products or services available in the marketplace;
- b. That no other product or service provides substantially equivalent or similar benefits;
- c. That, considering the benefits received, the cost of the product or service is reasonable in comparison to other products or services in the marketplace;
- d. That there is little or no possibility of competition from competing dealers or distributors.

No Sole or Single Source purchase will be approved by the Town Attorney without written justification from the procurer responding to points (a) through (d) above and supporting documentation on the letterhead of the entity providing the good, equipment, commodity or service that they are the sole source.

PART VIII. EMERGENCY PROCUREMENT

General Municipal Law §103 defines a "public emergency" as "arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting public buildings, public property or the life, health, safety or property of the inhabitants" of the Town "require immediate action which cannot await competitive bidding". Procurement in emergency situations is exempt from competitive bidding. However, when practicable you should make every effort to

obtain three (3) written quotes for the required goods or services or, if not practicable, three (3) verbal quotes. If three (3) quotes, written or verbal, are not practicable in light of the emergency, then you should make every effort to obtain two (2) written quotes, if practicable, or if not, two (2) verbal quotes. If it is not practicable to obtain any written or verbal quotes based upon the conditions and needs created by the emergency, then no quotes are necessary. Nevertheless, procurements in emergency circumstances should be justified in writing by the procurer or his or her designee, and approved in writing by the Town Supervisor or his/her designee.

PART IX. EQUIPMENT LEASES

True Leases* of equipment require quotations from at least three (3) separate potential vendors, if available. Procurers are reminded to consider the cost of consumable items (e.g. print cartridges for printers) when comparing potential vendors. Even if equipment is leased, the purchase of consumable items for the leased equipment is still subject to the applicable provisions of this Policy and may require that the consumable items be subject to competitive bidding or other applicable procurement methods.

* True leases include leases that do not contain or refer to installment plans, purchase options or the ownership of the leased equipment at the expiration of the lease. Please contact the Town Attorney if you have questions regarding true leases.

PART X. PROCUREMENT LOBBYING

A. Solicitation Requirements and Contacts during the Restricted Period

State Finance Law §139-j prohibits "Contacts" (verbal, written or electronic) that are intended to influence the Town's conduct or decision regarding a "Governmental Procurement" during the "Restricted Period." This period begins when the earliest written notice, advertisement or solicitation of a purchase and/or service procurement occurs and ends when the final contract is awarded and approved.

A Governmental Procurement involves a "Procurement Contract" which is a procurement involving an estimated annualized expenditure in excess of \$15,000 including any amendment, extension, renewal or change order. This includes all goods and services contracts as well as sale, lease, acquisition or granting of an interest in real property and revenue contracts where the Town is granting a concession or franchise. *See State Finance Law §139-j1(e) and (g) and §139-k(1)(e) and (g).* Grants, intergovernmental agreements and utility relocation project agreements, among other statutory exceptions, are not considered Procurement Contracts.

Every Request for Quotes (RFQ), Request for Proposals (RFP) or Request for Bids (RFB) for a Procurement Contract, must designate a person or persons who may be contacted by Offerors or Bidders in relation to the Procurement Contract. *State Finance Law §139-j(2)(a).*

The following types of contacts are permissible exceptions during the Restricted Period:

- ✍ Submissions of Quotes, Proposals or Bids
- ✍ Questions submitted for question and response under the RFQ, RFP, or RFB
- ✍ Participation in conferences open to all Offerors or Bidders;
- ✍ Complaints to the County Attorney that the designated individual of the Procuring Agency has failed to respond in a timely manner to authorized contacts;
- ✍ Negotiation of contracts with Offerors or Bidders who have been notified of a tentative award;
- ✍ Offerors or Bidders contacting the designated individual(s) to request review of an award;
- ✍ Contacts by Offerors or Bidders in protests, appeals or other review proceedings or,

complaints of alleged improper conduct to the District Attorney *See State Finance Law §139-j(3)(a)*.

Every solicitation (RFQ, RFP or RFB) for a Procurement Contract, as defined in this Part XI, must include a summary of the policy and prohibitions regarding permissible contacts, a copy of any guidelines, rules and regulations regarding permissible contacts and must also require a written affirmation from the Offeror or Bidder as to their understanding of and agreement to comply with the Town's procedures relating to permissible contacts. *See State Finance Law §139-j(6)(a) & (b)*.

Every solicitation for a Procurement Contract must also require Bidders or Offerors to disclose findings of non-responsibility due to violations of the permissible contacts provisions within the previous four years by any governmental entity where the prior finding of non-responsibility was due to violation State Finance Law §139-j or the intentional provision of false or incomplete information to a governmental entity. *State Finance Law §139-k(2)*. Furthermore, the solicitation must also require Bidders or Offerors to certify that all information provided with respect to this disclosure requirement is complete, true and accurate. *State Finance Law §139-k(5)*.

For any Contact during the restricted period, the procurer must obtain the name, address, telephone number, place of principal employment and occupation of the person or organization making the Contact and inquire and record whether the person or organization making such contact is a Bidder or Offeror or was retained, employed or designated by or on behalf of a Bidder or Offeror to appear before or contact the procurer about the procurement. All such Contacts must be included in the Procurement Record. *State Finance Law §139-k(4)*. However, any communications received by a Procuring Agency from members of the state legislature, or state legislative staff, when acting in their official capacity, shall not be considered to be a Contact and shall not be recorded by the Procuring Agency. *State Finance Law §139-k(6)*.

B. Violations and Investigations

Any officer or employee of the Town who becomes aware that a Bidder or Offeror has violated the restrictions on permissible contacts shall immediately notify the Town Supervisor or Town Attorney. *See State Finance Law §139-j(8)*.

Upon notice of any allegation of a violation of the restricted contacts provisions, the Town Supervisor shall immediately cause an investigation of the allegation to be initiated and, if sufficient cause exists to believe it is true, give the Bidder or Offeror reasonable notice of the investigation and an opportunity to be heard. *State Finance Law §139-j(10)(a)*. If a violation is found to be knowing and willful, the Bidder or Offeror shall be deemed non-responsible and the Director of Operations and Cost Control must notify the New York State Office of General Services of any such finding of non-responsibility. *State Finance Law §139-j(10)(b)*.

In the event of a knowing and willful employee violation, the Director of Operations and Cost Control shall report the employee's violation of this Policy and procedures to the Procuring Agency's head. *State Finance Law §139-j(10)(b) and (c)*.

PLEASE SEE STATE FINANCE LAW SECTION 139-J FOR COMPLETE PROVISIONS REGARDING THIS COMPLEX LAW.

PART XI. MWDBE REQUIREMENTS

All solicitations shall be performed and contracts prepared in compliance with any applicable state or federal laws, regulations, grant requirements, Town policies and procedures governing and/or relating to Minority, Women and/or Disadvantaged Business Enterprises.

PART XII. PROPOSAL AND BID OPENINGS

Prior to awarding a quote, bid or proposal, the individual making the award must have a written designation authorizing that individual to make such award on file with the Town Supervisor. The Town Supervisor shall have the discretion to approve such designations, which shall be made and maintained by the procurers. Designations may be made with regard to the type of procurement, dollar thresholds, etc. as the procurer in consultation with the Town Supervisor, shall see fit.

PART XIII. RESPONSIBILITY DETERMINATIONS

In addition to the responsibility determination required for Procurement Contracts under Part XII of this Policy and applicable state laws and regulations, the procurer must determine that any Bidder awarded a contract pursuant to General Municipal Law §103 is responsible and responsive. It is also recommended, though not required, that responsibility determinations be made with regard to vendors, consultants or contractors under all other types of solicitations. Responsible Bidders or Offerors are those that have the financial ability, legal capacity, integrity, and past experience to perform the contract. *See State Finance Law §163(1)(c)*. Responsive Bidders or Offerors are those that meet the minimum specifications or requirements set forth in the solicitation for the procurement. *See State Finance Law §163(1)(d)*. Bidders or Offerors who do not meet these standards may be declared non-responsible and/or irresponsible.

The authorization to reject future bids from a contractor due to the contractor's past irresponsible behavior and/or non-responsive performance is delegated to the original procuring official or his/her deputy in consultation with and with the approval of the Town Supervisor or his second in command and after consultation with the Town attorney, if available. Before officially declaring a Bidder or Offeror non-responsible or irresponsible, the procurer, in consultation with the Town Supervisor and/or Town Attorney, must provide the Bidder or Offeror notice that he or she may be declared non-responsible and/or irresponsible and that that declaration can be taken into consideration regarding future bids by that contractor; and that contractor will be accorded a hearing as soon as possible and no later than 48 hours of the receipt of a request for a hearing and shall be given an opportunity to be heard in accordance with procedures for all such hearings as may be established by the Town Attorney and Town Supervisor or by resolution of the Town Board. If no such request is made within 48 hours of being advised of the intended action, then the right to any such hearing is waived.

The authority to terminate or suspend the services of a contractor on the basis that the contractor is in serious breach of an awarded contract is delegated to the original procuring official or his/her deputy in consultation with and with the approval of the Town Supervisor or his second in command and after consultation with the Town attorney. If time is of the essence then the original procuring official may terminate the contractor immediately and thereafter, as soon as possible, consult with the Town Supervisor for his/her approval and shall also notify the Town Attorney. In any case in the event of such suspension or termination, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension or termination order. Contract activity may resume at such time as the procuring official and/or the Town Supervisor issues a written notice authorizing a resumption of performance under the contract. Before officially declaring a termination or suspension, the procurer, in consultation with the Town Supervisor and/or Town Attorney, must provide the Bidder or Offeror notice that its services

shall be terminated and/or suspended and there will be accorded, as soon as possible, an opportunity to be heard within 24 hours of the receipt of a request for a hearing in accordance with procedures for all such hearings by any procurer as may be established by the Town Attorney and Town Supervisor or by resolution of the Town Board. If no such request is made within 48 hours of being advised of the intended action, then the right to any such hearing is waived. In no case shall such termination or suspension of a contract by the Town be deemed a breach thereof, nor shall the Town be liable for any damages for lost profits or otherwise, which may be sustained by the contractor as a result of such termination.

With regard to the two paragraphs above the procuring official develop a form regarding the Town of Big Flats' contracts. Should the contract be through the State of NY Office of General Services, hereinafter OGS, (in the case of a NYS contract award) a form approved by GSA shall be utilized. GSA shall take whatever action they deem appropriate as soon as possible and advise the procuring official of what action they have taken.

In regard to any contemplated action such as barring from bidding or termination etc. of contract, extensive and complete documentation (in proportion to the nature of the work or product) is required.

PART XIV. PIGGYBACKING

General Municipal Law §103(16) allows procurement of certain goods (including apparatus, materials, equipment and supplies) and services through contracts let by the United States or any agency thereof, any state or any other political subdivision or district therein, if such contract was let in a manner consistent with competitive bidding, and has been made available for use by other governmental agencies. Approval for the use of "piggybacking" will be through the Department of General Services in collaboration with the County Attorney.

PART XV. BEST VALUE

Pursuant to General Municipal Law § 103(1) purchase contracts or public works contracts (except those subject to New York State Labor Law Article 8) may be awarded on the basis of the Best Value to the Offeror that optimizes quality, cost and efficiency, among responsive and responsible Offerors. Best Value solicitations shall prescribe the minimum specifications or requirements that must be met in order to be considered responsive and shall describe and disclose the general manner in which the evaluation and selection shall be conducted. The Basis of Award of the solicitation shall identify the relative importance and/or weight of cost and the overall technical criterion to be considered by a Procuring Agency in its determination of Best Value. The evaluation may also identify a quantitative factor for small businesses or certified minority- or women-owned business enterprises, as defined in Executive Law §300 (1), (7), (15) and (20). The Basis of Award shall reflect, wherever possible, objective and quantifiable analysis. Documentation in the Procurement Record shall, where practicable, include a quantification of the application of the evaluation criteria to the rating of proposals and the evaluation results, or, where not practicable, such other justification which demonstrates that Best Value will be achieved.

If Best Value is authorized as a procurement method eligible for piggybacking consideration, then any potential piggyback contract should be evaluated for substantial compliance with the above. All procurements based upon Best Value are subject to review and/or approval by the Town Supervisor or his designee. This supersedes and replaces Board Resolution No. 94-14 (Setting Best Value Award Policy).

PART XVI. RECORDKEEPING

In addition to any further recordkeeping requirements promulgated by the Town Supervisor and any federal or state law or funding source requirements, procurers shall maintain a written record for every procurement, which contains the following information, **as applicable**:

- ✍ Written determination of whether the procurement is subject to competitive bidding.
- ✍ Preferred Source Solicitation documentation.
- ✍ Documentation from Preferred Source, Town official or other government surplus programs, or group purchasing organizations and/or their distributors pertaining to purchases made through those entities.
- ✍ Solicitation documentation appropriate to the procurement method used (Request for Quotes/Bids/Proposals; advertising and other records of public distribution; contact records required by the Procurement Lobbying Law, the quotes, bids or proposal received, etc.).
- ✍ Award documentation (score sheets or other written analysis of the quotes, bids or proposals, the award decision, notice of award, etc.).
- ✍ Purchase Order or Contract documentation (purchase order or contract with all attachments, appendixes, business associate agreements, insurance, etc.).
- ✍ Contract Administration documentation (performance reports, invoices, payroll certifications, payment records, records of disputes, etc.).

PART XVII. INDIVIDUALS RESPONSIBLE FOR PURCHASING.

Certain designated individuals are procurers and are responsible for purchasing decisions. However no contract is binding on the Town until approved and executed by the Town Supervisor and or Town Board. Also pursuant to Chapter 402 of the Laws of 2007, effective January 1, 2009, as required under Section 104-b of the NYS General Municipal Law, the Town is including the municipal positions responsible for purchasing decisions, as follows (THIS LIST MUST BE REVIEWED BIENNIALY):

Town Supervisor
Town Council
Town Attorney
Town Justice
Bookkeeper
Commissioner of DPW
Highway Supervisor
Water Supervisor
Town Clerk & Receiver of Taxes and Fees
Planning & Code Enforcement
Youth Coordinator
Director of Recreation
Assessor

PART XVIII. STATUTORY AUTHORIZATIONS

All procurement under this Policy related to federal or state statutory citations shall be made in accordance with the current version of the statute at the time of procurement, notwithstanding the specific language of this Policy. Procurements may also be made in accordance with any additional statutory authorizations, existing or future, regardless of whether they are mentioned in this Policy.

PART XIX. EFFECTIVE DATE

The effective date of this Policy as modified and reaffirmed shall immediately.

This policy shall go into effect the date after this policy is approved, and will be reviewed annually.

CARRIED: AYES: Giammichele, Adams, Saglibene, Fairbrother NAYES: None
ABENT: Gillette

RESOLUTION NO.131-15

**BIG FLATS COMMUNITY DAYS, INC. AGREEMENT TO ORGANIZE AND OPERATE &
RUN THE ANNUAL COMMUNITY DAYS FESTIVAL APPROVED**

Resolution by: Adam
Seconded by: Saglibene

WHEREAS Big Flats Community Days, Inc. is a not-for-profit corporation that organizes, operates and runs an annual Community Days festival which is held at the Big Flats Community Park, and

WHEREAS for environmental review purposes, administration is a Type II action in accordance with SEQRA 6NYCRR, Part 617.5(c) (20) and as such no further action is necessary regarding the same, now

BE IT THEREFORE RESOLVED the Town Board authorizes the Town Supervisor to sign the agreement with Big Flats Community Days, Inc. for the purpose of holding the Big Flats Community Days festival at Community Park on June 25-27, 2015 subject to the review and approval by the Attorney of the Town.

CARRIED: AYES: Giammichele, Adams, Saglibene, Fairbrother NAYES: None
ABENT: Gillette

RESOLUTION NO. 132-15

PERMIT FEE WAIVER FOR BIG FLATS COMMUNITY DAYS, INC. APPROVED

Resolution by: Saglibene
Seconded by: Giammichele

WHEREAS Big Flats Community Days, Inc. is a not-for profit corporation that organizes, operates and runs an annual Community Days festival which is held at the Big Flats Community Park, and

WHEREAS the festival requires the use of the Community Park and pavilions for a period running from June 25-27, 2015, and

WHEREAS the proceeds from Big Flats Community Days Inc. as indicated in the Big Flats Community Days, Inc. Bi-Laws goes towards the beautification of the Town and its parks, and

WATER / TOWN BOARD MEETING OF MAY 13, 2015

RESOLUTION NO. 132-15, PERMIT FEE WAIVER FOR BIG FLATS COMMUNITY DAYS, INC. APPROVED continued

WHEREAS for environmental review purposes, administration is a Type II action in accordance with SEQRA 6NYCRR, Part 617.5(c) (20) and as such no further action is necessary regarding the same, now

BE IT THEREFORE RESOLVED the Town Board waives the fees pertaining to the use of Big Flats Community Park, due to the fact that said proceeds are used for the beautification of the Town and its parks, for the purposes of holding the Big Flats Community Days Festival.

CARRIED: AYES: Giammichele, Adams, Saglibene, Fairbrother NAYES: None
ABENT: Gillette

RESOLUTION NO. 133-15
BIG FLATS COMMUNITY DAYS, INC. GAMES OF CHANCE APPROVED

Resolution by: Giammichele
Seconded by: Adams

WHEREAS an application for Games of Chance was received from Big Flats Community Days, Inc. dated January 19, 2015, and

WHEREAS for environmental review purposes, administration is a Type II action in accordance with SEQRA 6NYCRR, Part 617.5(c) (20) and as such no further action is necessary regarding the same, now

BE IT THEREFORE RESOLVED the Town Board approves the License for Charitable Gaming GCVS-1) Verified Statement of Raffle Ticket Operations, dated January 29, 2015 from Big Flats Community Days, Inc. to perform Raffle Ticket Operation events as outlined in the application.

CARRIED: AYES: Giammichele, Adams, Saglibene, Fairbrother NAYES: None
ABENT: Gillette

RESOLUTION NO. 134-15
WAGNER HARDWOOD, LLC, TIMBER HARVEST, TAX PARCEL #87.00-1-19,
PERMIT APPROVED

Resolution by: Adams
Seconded by: Saglibene

WHEREAS a Timber Harvesting Application has been received from Wagner Hardwood, LLC to harvest the timber from approximately 45 acres of land as designated in the April 29, 2015 agreement with the town, and

WHEREAS the Town Board finds this action to be an Unlisted Action Under SEQRA and to have no significant effect on the environment based on the following facts:

RESOLUTION NO. 134-15, WAGNER HARDWOOD, LLC, TIMBER HARVEST, TAX
PARCEL #87.00-1-19, PERMIT APPROVED continued

1. The timber harvesting will begin May 15, 2015.
2. All roads will be graded and water bars installed at completion.
3. The landing areas, all skid roads and stream crossings will be smoothed and free of debris, also the landing and skid roads will be seeded with a conservation mix after the harvest is complete, now

BE IT THEREFORE RESOLVED, the Town Board held a public hearing on May 13, 2015, and

FURTHER RESOLVED the application for a timber harvesting permit submitted by Wagner Logging, LLC. is approved as follows:

1. The applicant will adhere to the Timber Sale Agreement with the Town of Big Flats, dated April 29, 2015.
2. The logging operation, as proposed, will involve trucks using State Route 352 to I86. Trucks hauling logs will be required to display a valid safety inspection sticker on the windshield.
3. The transport of logs may only occur between the hours of 9:00am to 7:00pm daily with the exception that on days public schools are in session the transport of logs may not occur between the hours of 1:30 and 4:30PM.
4. All roads shall be kept free of dust and debris created by the logging operation. The roadway will be inspected and cleaned by the logger on a daily basis as needed and must be cleaned when required by the Code Enforcement Officer as a result of any inspections.

Prior to Obtaining Permit

5. A performance guarantee in the form of a certified check for \$1350 must be posted with the Code Enforcement Office before any timber harvesting may begin. The performance guarantee will be returned upon the satisfactory completion of all logging operations, compliance with conditions of this resolution, and a final inspection of the timber harvesting site by the Code Enforcement Officer, and a representative from Chemung County Soil and Water Conservation Service, if deemed necessary.

Prior to any Logging Operations

6. Proof of Vehicle, General Liability, and Workers Compensation Insurance with minimum liability coverage for personal injury or death of \$1,000,000 and for property damage of \$250,000 for logging operations, unless authorized by the Town Board and the Town Attorney. The Town of Big Flats must be listed as an additional insured and said proof must be filed with the Code Enforcement Office at least 48 hours before commencing any logging operations. Said proof of insurance must be approved by the Town Attorney prior to commencement of work.
7. Notification, in the form of a letter and a copy of the map showing the approved logging area must be provided to all abutters.

WATER / TOWN BOARD MEETING OF MAY 13, 2015

RESOLUTION NO. 134-15, WAGNER HARDWOOD, LLC, TIMBER HARVEST, TAX
PARCEL #87.00-1-19, PERMIT APPROVED continued

During Harvesting Activity

1. The logging site shall be subject to periodic inspections by the Code Enforcement Officer,
Town Forester and Chemung County Soil & Water Conservation Service Representatives at any time during the course of the operation. These inspections will be done between 10:00am and 4:00pm.
2. The logger shall notify the Code Enforcement Officer within five days of completion to Coordinate onsite inspections.

CARRIED: AYES: Giammichele, Adams, Saglibene, Fairbrother NAYES: None
ABENT: Gillette

RESOLUTION NO. 135-15
VOID CHECK AND BUDGET AMENDMENT AND ADJUSTMENT APPROVED

Resolution by: Saglibene
Seconded by: Adams

WHEREAS a memorandum was received from the Bookkeeper, dated May 6, 2015, requesting authorization to void two checks, and a budget amendment and adjustment, and

WHEREAS for environmental review purposes, administration is a Type II action in accordance with SEQRA 6NYCRR, Part 617.5(c) (20) and as such no further action is necessary regarding the same, now

WHEREAS the Bookkeeper is also requesting budget transfers due to unbudgeted expenses for current and the rest of the year items, and

Increase Appropriations-A.0960	75,000
Increase Contingency Account—A1990.0400	75,000
Increase Appropriated Fund Balance A.0599	75,000

BE IT THEREFORE RESOLVED the Town Board authorizes the Bookkeeper to void check #13567 for \$142.42, dated August 22, 2014, made payable to Michael Saglibene, and void check #13715 for \$66.08 dated November 26, 2014 made payable to Deanne Williams, and reissuing new checks due to misplacement, and

FURTHER RESOLVED the Town Board authorizes the Bookkeeper to adjust:

WATER DISTRICT #1 --Capital Improvements Reserves (CIR)

Hunt Engineer on behalf of Water District # 1 has received 2 rebate checks totaling \$12,000 from NYSERDA for generator and VFD'S units purchased.

WATER / TOWN BOARD MEETING OF MAY 13, 2015

RESOLUTION NO. 135-15, VOID CHECK AND BUDGET AMENDMENT AND
ADJUSTMENT APPROVED continued

Please authorize to adjust \$12,000 to the Capital Improvement Reserves Fund
originally taken out in 07/2014.

Increase Capital Improvement Reserves –\$1.0878 \$12,000

CARRIED: AYES: Giammichele, Adams, Saglibene, Fairbrother NAYES: None
ABENT: Gillette

RESOLUTION NO. 136-15
FIREWORKS PERMIT WITH AMERICAN FIREWORKS DISPLAY LLC, BIG FLATS
COMMUNITY DAYS APPROVED

Resolution by: Giammichele
Seconded by: Adams

WHEREAS Big Flats Community Days Inc. will be holding their Annual Community Days Festival
June 25th through June 27th 2015, and

WHEREAS Big Flats Community Days, Inc. has contracted with American Fireworks Display, LLC
to conduct a fireworks display on June 26, 2015, and

WHEREAS for environmental review purposes, administration is a Type II action in accordance with
SEQRA 6NYCRR, Part 617.5(c) (20) and as such no further action is necessary regarding the same,
now

BE IT THEREFORE RESOLVED the Town Board authorizes the Fireworks Commissioner Lee
Giammichele to sign the Fireworks Permit, contingent upon the review and approval by the Attorney
of the Town, permitting the fireworks display per the agreement between by Big Flats Community
Days, Inc. and American Fireworks Display LLC to be held on June 26, 2015.

CARRIED: AYES: Giammichele, Adams, Saglibene, Fairbrother NAYES: None
ABENT: Gillette

RESOLUTION NO.137-15
COMMUNICATION LOG FOR MAY 13, 2015 APPROVED

Resolution by: Adams
Seconded by: Saglibene

BE IT RESOLVED that the following communications were received, accepted and filed by the
Town Clerk of the Town of Big Flats and referred to the appropriate Department Head for
information and/or action:

April 30, 2015

Time Warner Cable – RE: Comcast Corporation Agreement *Referred to: Town Board, and filed
with Town Clerk.*

WATER / TOWN BOARD MEETING OF MAY 13, 2015

RESOLUTION NO.137-15, COMMUNICATION LOG FOR MAY 13, 2015 APPROVED
continued

April 30, 2015

Time Warner Cable – RE: Free calls to Nepal *Referred to: Town Board, and filed with Town Clerk.*

May 6, 2015

Time Warner Cable – RE: May 6, 2015 Programming Notice Changes *Referred to: Town Board, and filed with Town Clerk.*

May 7, 2015

Hibu – RE: Notification of Yellowbook's

CARRIED: AYES: Giammichele, Adams, Saglibene, Fairbrother NAYES: None
ABENT: Gillette

Supervisor Fairbrother also reported;

- Dog Signs on order, should arrive shortly
- Parking at the Community Park for Concerts at Tags – 60% of the Money goes for Park Projects for the Town, and the other 40% goes to organization that came and helped with parking of the cars. Supervisor Fairbrother, Thanked, Councilmen, Mike Saglibene, and Lee Giammichele for the pronominal job they did.
- I86 project – There is well over 100 people going through the phase, group of government, health agencies, educational, and private industries to help develop and retain jobs here. It's from I99 near Route 15 to the Elmira Exit.
- Novus – moving forward
- Handbook Completed - presentation to Town Employees next week
- Hire a consultant for the HVAC system- problem in code department.
- Parks Committee Meeting was Post pone, they are working on putting a playground equipment to enhance the Community Park Ext. near the pavilion on 352 softball fields
- Klee - updates from Attorney Reilly
- Hammond Street – We have received the deed it is in the Towns Name now, we will proceed with putting this up for bid.
- Emhart Powers, the Piolet program, we might have a few changes
- LED we have an RFP put together and account, to get rebates
- Gas bid completed at .358 per therm, great savings for the Town
- Meet with Shawn Crater on water rates – on how we are going to justify it going forward.
- Whitney Park – A Gentlemen from Dominion Gas will be in to speak with Supervisor Fairbrother to see if we can get something done in Whitney Park. Fairbrother then mentioned he spoke with Bob Byland, and he is still very interested in doing something in Whitney Park with the site and impaired Kids, through the (LCIF) Lions Club.
- Community Center Open House & Information Fair, Thursday, June 4th, 5:00-7:00 pm
- Attorney Reilly will be out of town for 2 weeks, but will be checking email and phone messages.

WATER / TOWN BOARD MEETING OF MAY 13, 2015

- Supervisor Fairbrother schedule – Out for a conference May 14-15, and May19-26th.
- Roy Mining is asking for an extension for their permit for their digging. We meet with DEC (Department of Environmental Conservation) today and the Airport, regarding several concerns. Any complaints regarding dust, please call the Town Clerks Office regarding the phone numbers to call DEC.
- NYSEG is digging here in town, 1,900 services will be replaced with in two years.
- Supervisor Fairbrother passed out the Financial Statement to the Board.

Councilperson Giammichele, said thanks to Chris Austin and Jay Goodwin for spraying the softball field. Chris replied he will be working with Corey to spray little league, major and minor Fields also before Memorial Day weekend.

Councilperson Giammichele made a motion, seconded by Councilperson Adams to adjourn the Town Board meeting at 6:01 p.m. All in favor except Councilperson Gillette who was absent, motion carried.

Date approved: _____ Linda Cross
Town Clerk